

Appeal from decision of Oregon State Office, Bureau of Land Management, denying protest of failure to prepare an environmental impact statement for an agreement between the Bureau of Land Management and the Oregon Department of Fish and Wildlife concerning management of Northern Spotted Owl habitat in western Oregon.

Affirmed.

1. Environmental Policy Act -- Environmental Quality: Environmental Statements -- National Environmental Policy Act of 1969: Environmental Statements

Execution of a cooperative agreement between the Bureau of Land Management and a state wildlife management agency providing for study and preservation of wildlife habitat does not ordinarily constitute a proposal for major Federal action which may adversely affect the human environment requiring preparation of an environmental impact statement.

APPEARANCES: Michael D. Axline, Esq., Eugene, Oregon, for appellants; Donald P. Lawton, Esq., Assistant Regional Solicitor, Pacific Northwest Region, for Bureau of Land Management; Gail L. Achterman, Esq., Portland, Oregon, for the Association of O & C Counties, intervenor.

#### OPINION BY ADMINISTRATIVE JUDGE GRANT

The Lane County Audubon Society, the Oregon Natural Resources Council, and the Oregon Chapter of the Sierra Club 1/ appeal the November 9, 1983, decision of the Oregon State Office, Bureau of Land Management (BLM), denying

---

1/ One of the prerequisites to prosecution of an appeal before this Board is that the appellant be a "party to the case." 43 CFR 4.410. The record does not indicate that the Oregon Chapter of the Sierra Club was a participant in the protest denied by BLM which action is the subject of this appeal. The purpose for requiring a party to seek consideration first by the local authorized officer is to provide BLM the opportunity to consider its actions with the benefit of that party's input before the decision is reviewed on appeal. An appeal brought by a party who has not protested to BLM on that

a protest of BLM's determination not to prepare an environmental impact statement (EIS) for a September 26, 1983, agreement between BLM and the Oregon Department of Fish and Wildlife (ODFW). The agreement concerns management of spotted owl habitat on BLM-administered lands in western Oregon. Appellants claim that their respective members use the BLM-administered lands involved in the management of spotted owl habitat and maintain an active interest in the protection and preservation of birds and wildlife found in Oregon, including the Northern Spotted Owl (Strix occidentalis caurina).

The record indicates the Northern Spotted Owl was included in the Oregon State Game Commission's 1971 list of Endangered Vertebrates of Oregon. The spotted owl's primary habitat has been identified as old-growth (over 200 years) Douglas fir stands. Recognizing the inevitable decline of the Northern Spotted Owl in Oregon should its habitat, old-growth forests, be eliminated through timber harvests, establishment of definite habitat requirements for the spotted owl became a concern. Responsibility for this task was accepted by the Oregon Endangered Species Task Force. 2/ It appears from the record that in 1973, the Northern Spotted Owl was added to the Department's preliminary list of threatened wildlife of the United States. 3/

---

fn. 1 (continued)

subject is, in effect, forcing the Board to render the initial decision even though it is vested with appellate authority. See California Association of Four Wheel Drive Clubs, 30 IBLA 383, 385 (1977).

Since the Sierra Club was not a party to the case below, we cannot recognize the standing of the Oregon Chapter of the Sierra Club as an appellant on the issues presented in this appeal. However, it appears jointly with the two parties who were the original protestors. The Sierra Club offers no separate argument on its own behalf. Since BLM has already considered the arguments presented here when the original protest was brought, no purpose would be served by remanding the case in part to be treated as a protest by the Oregon Chapter of the Sierra Club. We therefore shall proceed to consider this appeal as one presented by Lane County Audubon Society and the Oregon Natural Resources Council and dismiss the appeal of the Oregon Chapter of the Sierra Club. See Julie Adams, 45 IBLA 252 (1980).

2/ The group consisted of representatives from Oregon Wildlife Commission, Oregon State University, U.S. Forest Service, U.S. Fish and Wildlife Service, and BLM.

3/ The Northern Spotted Owl has not been officially listed for protection under section 7 of the Endangered Species Act (ESA), 16 U.S.C. § 1536 (1982), as a nationally threatened or endangered species. See 50 CFR 17.11. As a result of the State's listing of the species as threatened in Oregon, it is afforded some protective measures under section 6 of ESA, 16 U.S.C. § 1535 (1982). In addition, section 2 of the Act of Oct. 18, 1974, 16 U.S.C. § 670h(a)(1) (1982), requires the Secretary of the Interior to "develop, in consultation with the State agencies [responsible for the administration of fish and game laws], a comprehensive plan for conservation and rehabilitation programs" to be implemented on public land with regard to the wildlife, fish, and game. A state agency "may enter into a cooperative agreement" with the Secretary with respect to such a program. The agreement "shall \* \* \* provide adequate protection for fish and wildlife \* \* \* considered to be threatened, rare, or endangered by the State agency." 16 U.S.C. § 670h(c)(1)(A) and (c)(3)(D) (1982).

The record discloses that the Oregon Endangered Species Task Force recommended in 1976 that "400 pairs of spotted owls on the public lands in Oregon [be maintained] consistent with the specific habitat requirements of the species." General guidelines for implementing this recommendation were presented in a Spotted Owl Management Plan (SOMP) which BLM accepted in 1978. SOMP set the minimum home range habitat for each pair of nesting owls at 300 acres of old-growth forest as an interim protective measure. BLM's commitment under SOMP was to maintain habitat to support a minimum of 90 pairs of spotted owls. By Instruction Memorandum OR 78-74, dated February 16, 1978, "Spotted Owl Land Use Guidelines" were issued allocating the number of spotted owls to be protected by each BLM district in western Oregon where old-growth forests are found. Individual district planning was conducted with the intent that each district was responsible for protecting its assigned allotment. In 1979, the Lane County Audubon Society and others <sup>4/</sup> protested BLM's acceptance and implementation of SOMP without preparing a regional EIS to evaluate the environmental consequences. BLM's decision to address the environmental issues in the separate EIS's prepared for each district's timber management plan was appealed to the Board where the decision was affirmed. National Wildlife Federation, 62 IBLA 73 (1982).

Meanwhile, Eric Forsman, recognized authority on the Northern Spotted Owl, completed field studies in 1981 supporting new minimum home ranges for each pair of nesting spotted owls. In response to the Forsman study, SOMP was revised in 1981 to recommend that 300 acres of old-growth forest be maintained for each pair of spotted owls and 1,000 acres of old-growth within a radius of 1.5 miles of the pair's nest be managed for the option of retention should further studies confirm greater habitat needs.

In 1983, BLM issued the South Coast-Curry Timber Management Plan (TMP) for which an EIS had been prepared. The State of Oregon complained to BLM that this TMP was not consistent "to the maximum extent practicable" with the Oregon Coastal Zone Management Plan <sup>5/</sup> and was contrary to Oregon's wildlife policy, ORS 496.016, because it failed to account for the minimum requirements established in the Revised SOMP. After negotiations between BLM and certain agencies of the State, an agreement concerning guidelines for managing spotted owl habitat on BLM lands in western Oregon was executed on September 26, 1983. <sup>6/</sup> We quote the text of the agreement in full:

1. The parties (ODFW and BLM) agree that spotted owl habitat shall be managed by BLM to maintain viable populations by utilizing the best available scientific information to prevent serious depletion of this indigenous species of wildlife.
2. The parties agree that BLM will, for the next five years, manage the habitat to maintain a population of 90 pairs of spotted owls, with appropriate distribution of

---

<sup>4/</sup> The other groups joining the appeal were the National Wildlife Federation, Oregon Wilderness Coalition, and Portland Audubon Society.

<sup>5/</sup> "Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs." 16 U.S.C. § 1456(c)(1) (1982).

<sup>6/</sup> Agreements between Federal and state agencies for the protection of wildlife are addressed in 16 U.S.C. §§ 670g, 670h, 1535 (1982). See note 3, supra.

pairs, as a contribution to maintaining a minimum viable population in western Oregon. The parties will work cooperatively in developing habitat management plans for each of the western Oregon BLM districts to carry out the intent of the agreement. The parties will work cooperatively in allocating habitat-protected pairs between districts. Annual timber harvest plans will be reviewed by the parties to assure that the intent of this agreement is maintained.

3. No later than October 1, 1988 the parties will review any new scientific information and current conditions of spotted owl pairs and habitat to determine at that time what actions are necessary for the protection of spotted owls. This agreement shall become effective when signed by the parties hereto and shall continue in force until termination by either party upon thirty days notice in writing to the other of its intention to terminate upon a date indicated.

4. If this agreement is carried out, ODFW agrees that the purposes of OR 496.012 will be met on BLM lands in western Oregon as they relate to protection of spotted owls. The parties understand that ODFW, in cooperation with BLM district offices, will monitor implementation of this agreement and shall recommend actions to BLM and, if necessary to LCDC, to assure that the agreement is carried out.

Appellants contend that the agreement is an action requiring an EIS because it represents a new program with specific standards different from those applied in the district management plans for western Oregon. They claim that a failure by BLM to change its management plan will significantly impact the spotted owl population and revision of those plans to preserve additional old-growth timber areas will significantly impact other areas. Since the effect of either action is unknown, they argue, an environmental study is necessary. BLM's denial of their protest presenting these arguments gave rise to this appeal before the Board.

The Association of O & C Counties, representing counties in western Oregon which claim an interest in the management and development of BLM lands, appears as intervenor and has submitted a reply to appellants' statement of reasons.

[1] Section 102(2)(C) of the National Environmental Policy Act (NEPA) requires an EIS to be prepared and included "in every recommendation or report on proposals for legislation and other Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C) (1982). This section is properly interpreted as applying to those recommendations or reports that actually propose programmatic actions. Andrus v. Sierra Club, 442 U.S. 347, 362 (1979). Thus, an EIS is not required until an agency makes a recommendation or report on a proposal for major Federal action. Kleppe v. Sierra Club, 427 U.S. 390, 403-06 (1976). A review of the agreement quoted herein demonstrates that it cannot properly be characterized as the type of action which would, by itself, trigger the requirement of an EIS under NEPA. This agreement between BLM and ODFW is a joint effort to encourage further studies on spotted owl habitat requirements and to coordinate implementation of material information in subsequent decisionmaking with respect to BLM's management plans. It clearly describes an interim step in the planning process related

more to gathering of information than decisionmaking. Basically, the agreement contains no definitive action that can be evaluated for environmental consequences.

The purpose of preparing an EIS is to make decisionmakers aware of the potential effects of the proposed actions and possible mitigating alternatives. Congress did not intend an agency to prepare an impact statement where there is to be no action. Defenders of Wildlife v. Andrus, 627 F.2d 1238, 1243 (D.C. Cir. 1980). Only when an agency reaches a point in its deliberations where it is ready to pursue a course of action is it obligated to assess the impact in an environmental assessment (EA) or an EIS. We do not find that BLM is required to prepare an EIS for this agreement where its objective is to offer guidelines for pursuing and utilizing information helpful in plotting its eventual course of action. An additional EIS at this stage would add nothing to BLM's environmental analysis that must accompany its proposed TMP's.

Appellants have not demonstrated that BLM is failing to support and implement the national policy expressed in NEPA. See 42 U.S.C. § 4331 (1982). Since no action requiring an EIS has been proposed, appellants' protest is properly denied.

Appellants additionally complain that BLM has never prepared an EIS for the cumulative impacts its management practices will have on the spotted owl program. Appellants' contention that a regional EIS for cumulative impacts on the spotted owl population must be prepared was previously addressed in National Wildlife Federation, supra. The Board held that such an EIS is not required where the significant environmental issues are adequately considered in the separate district plans. Appellants allege that the proposed TMP's do not present an adequate environmental analysis of the spotted owl situation and, in particular, charge that those TMP's do not adopt the guidelines of the revised SOMP. The vehicle for such debate is not the present appeal where the issue is whether adoption of the cooperative agreement requires an EIS. Rather, the issue is properly raised in challenges of the TMP's involving proposals for actions which might have an impact on spotted owls. It is in the latter context of proposed timber management actions which may affect spotted owls that an environmental analysis is required and the need to consider the cumulative impact of timber management in several geographic localities is properly evaluated. At that time BLM will offer an opportunity to comment on its management plans and the assembled environmental data will be available for review to consider whether or not the relevant environmental issues have been properly addressed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision to deny appellants' protest is affirmed.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

Wm. Philip Horton  
Chief Administrative Judge

Bruce R. Harris  
Administrative Judge

